

STATEMENT
OF

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BEFORE
THE

HOUSE COMMITTEE ON THE JUDICIARY'S SUBCOMMITTEE ON CRIME,
TERRORISM, AND HOMELAND SECURITY

ON

THE CRIMINAL RESTITUTION IMPROVEMENT ACT OF 2006

ON

JUNE 13, 2006
WASHINGTON, D.C.

Mr. Chairman and Distinguished Members of the Sub-Committee:

My name is Dan Levey and I come before you today as the current National President for The National Organization for Parents Of Murdered Children, Inc., (POMC) which is also for the families and friends of those who have died by violence. I am pleased to be here on behalf of POMC to give input on this important piece of federal legislation regarding restitution.

I would like to acknowledge and thank Ohio Representative Steve Chabot, who has been a longtime supporter of victims' rights and of POMC. It is no surprise that Representative Chabot is the sponsor of this important piece of federal legislation which aims to improve the collection and enforcement of restitution for victims of federal crimes.

I am the Adviser for Victims to Arizona Governor Janet Napolitano, the first position of its kind in any governor's office in the nation. I am also the current National Vice President of Administration for the National Organization for Victim Assistance (NOVA), which is based here in Washington DC. My most important credential is one I'd rather not have. I lost a loved one to murder.

In the early morning hours of November 3, 1996, my life as I knew it changed forever, like so many victims of violent crime who receive a telephone call or a knock on the door with news that fundamentally alters their existence. My sister-in-law called to tell me that my brother Howard had been shot while waiting for his friends to show up for their weekly Sunday morning

basketball game. My brother was a well educated husband, father, son, brother, and friend to many. Howard was shot by two gang members at point-blank range, thrown out of his car, and left to die. I learned firsthand the harsh reality of what it is like to have a loved one murdered and have since dedicated my life's work to the memory of my beloved brother. It is with this experience and background that I come before you to speak of the importance of this piece of legislation.

Parents Of Murdered Children, Inc. was founded by Charlotte and Robert Hullinger in 1978, in Cincinnati Ohio, three months after their daughter Lisa was murdered. POMC is headquartered in Cincinnati, Ohio, and is the only national self-help organization designed solely to offer emotional support and information about surviving the murder of a loved one. POMC has grown from the first meeting in the basement of the Hullinger's home to a national organization with 60 chapters throughout the United States, Canada, and Puerto Rico that provide assistance and support to over 100,000 survivors each year.

Restitution is a fundamental need of crime victims. Its importance for victims with respect to financial as well as psychological recovery from the aftermath of crime cannot be overestimated. Being a victim of a crime, especially a violent crime, leaves a devastating impact on its victims. You cannot put a price tag on human life and there is no financial remuneration that can ever replace what victims have lost. However, restitution holds the offender accountable and, when paid, helps offset the economic loss experienced by the victim, who is often left with medical bills, funeral costs and other expenses. In some cases, a murder takes the life of the primary bread winner, leaving no way to even pay the rent.

Restitution is critical to crime victims because it assists them in recovering economic losses that result from criminally injurious conduct. It is a vital part of the criminal justice system because it offers victims a sense of justice and holds offenders accountable for their crimes. Payment of restitution promotes the active participation of both offenders and victims in the justice process. It shifts the focus of justice system interventions and makes them victim-centered rather than offender-centered. Restitution can be an important mechanism for helping offenders understand the full impact of their criminal behavior on their victims. The offender should be held accountable for restoring the victim and community as much as possible to their pre-offense economic condition. Restitution is a primary tool used for accomplishing this goal.

It is for these reasons that, 10 years ago Congress passed the Mandatory Victims Restitution Act of 1996.¹ In passing that Act, Congress intended to “ensure that the loss to crime victims is recognized, and that they receive the restitution that they are due” as well as “to ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society.”²

This was critical legislation – but we must do more and better.

Victims often learn that justice is not always as swift, severe or certain as we learned in our civics class. Criminal and juvenile justice professionals, crime victims and victim service providers, all share frustration about how restitution is ordered, collected, distributed, and

¹ Pub. L. 104–132, title II, subtitle A (§201 et seq.), 110 Stat. 1227 (1996).

² S. Rpt. No.104-179, at 24 (1995).

monitored. Victims rightfully and reasonably expect that an order of restitution will be honored and collected upon. But too often it is not.

The victim is the only person in the entire criminal justice process that did not choose to be there – and the victim is the one with the most at stake. Victims should never be surprised by the system that is designed to provide them justice. Issues that arise with offender non-payment or late payment should be shared with the victim, within the confines of confidentiality. Communication needs to flow freely from and to the prosecutor, court and probation department. Helping families heal – and pay the light bill – should not be a matter of internal politics or buck passing. Our courts should live up to the promise of justice and to the intent of the legislation Congress passed 10 years ago.

There are several key components of The Criminal Restitution Improvement Act of 2006:

3663(a) - makes restitution mandatory for all offenses with an identifiable victim suffering a pecuniary loss. Expands restitution to include not only the convicted offense but also any other criminal conduct committed during the same criminal episode.

3663(c) - expands restitution to allow for attorneys' fees associated with collecting restitution.

3663(e) - instructs the court to order restitution to the best of its ability in cases with a large number of victims or complex restitution issues.

3664(b) - allows the victim to view the restitution portions of the presentence report upon request.

3664(j) - instructs the court to order that restitution is due in full immediately and makes a payment schedule discretionary. Currently, 3664(f)(2) requires the court to set a payment schedule. This new section is intended to assist with restitution collection by providing the court greater flexibility in ordering payments and creating a schedule.

3664(l) - changes current law from joint and several liability or apportioned payments to joint and several liability only.

3664(m) - prohibits early termination of supervised release and requires extension of supervised release for limited purpose of collecting restitution.

3664(r) - allows the government to collect restitution above the payment schedule if it discovers concealed assets.

Section 4 - prohibits early termination of probation and requires extension of probation for the limited purpose of collecting restitution.

Section 6 - rewrites the "Son of Sam" law (section 3681 of title 18) prohibiting profiting from criminal activity to conform with the Supreme Court's 1991 decision in *Simon & Shuster v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105 (1991).

These are important and significant improvements for victims of federal crime. I would respectively request that additional areas be considered such as;

1. Deposit unclaimed restitution payments (due to inability to locate the victim) into the Crime Victims Fund; if the victim is located, they can then be paid out of the Fund.
2. Federal judges can now decline to order restitution if there are too many victims to make calculating the individual amounts too difficult. I suggest authorizing judges to order the restitution be paid into the Fund.
3. Expand "community harm" restitution, which is now authorized only in certain drug cases, to be ordered in any similar non-drug case to be paid into the Crime Victims Fund

Specifically to the bill;

P. 3; ln.6-7: Special Rule for Misdemeanors: The Act would strike “in addition to” in section 3663A. Currently, a magistrate may make a restitution order “in addition to or in lieu of” any other penalty authorized.

The “in addition to language” should be retained. Omitting this language encourages a magistrate judge to dispose of misdemeanor offense by ordering a defendant to make restitution. While acceptable in some cases, it may not be in all cases.

P. 3; ln. 10-12: Alternative Arrangements in Light of Practical Problems: Subsection (e) encourages the court to make complete restitution as possible, “though not the full restitution to all victims otherwise required.”

The “though not the full restitution to all victims otherwise required by this section” language should be stricken. The preceding language provides sufficient discretion to the court to make

restitution orders to the extent practicable. Including this language may sway courts to find otherwise.

P.5; In 12: Notice to Victims: Subsection (D) requires the probation officer to inform the victim of the scheduled date, time and place of the sentencing hearing.

This subsection should be stricken as it results in a duplication of effort. Currently, the U.S. Attorney's Office provides case status and sentencing information to crime victims. Victims may feel inundated and frustrated with information overload. There is no evidence that the Victim Witness Programs of the U.S. Attorney's Offices are not providing timely and accurate notice of this information to crime victims.

P.6; In 20-22: Date for Final Determination: This section provides that if a victim's losses are not ascertainable 10 days before sentencing, the AUSA or probation officer shall inform the court and the court shall set a date for final determination of the victim's losses not to exceed 90 days after sentencing. If the victim subsequently discovers further losses "the victim" must petition the court for an amended restitution order.

Requiring the victim to file a petition to the court places a substantial burden on the victim. If enacted, this will be the first time that a crime victim is required to file a pleading in a federal case. Consistent with existing law and procedure, the attorney for the government should file the petition. Requiring a victim to do so will likely result in a victim not filing for actual losses and therefore undercut the purpose of the Act.

P. 9; ln.1-8: Extension of Supervised Release: The court shall order sentenced to pay restitution to a term of supervised release. The supervised release term shall not terminate before the order to pay restitution is completely satisfied and can be the sole condition of supervised release.

I think this is a favorable provision. Currently, if a restitution order is not fulfilled, some courts revoke supervised release and sentence the defendant to a custody term that voids the supervised release term and thus the restitution order. This provision ensures that the restitution order is fully complied with.

P.9; ln.18: Effect of Insurance and Other Compensation: “or agency” should be inserted after “person.”

P.12; ln 1-6: Name and Address Changes: Requires the victim to notify the court of his/her address changed while restitution is owing.

For practical purposes, the victim should report name and address changes to the U.S. Attorney’s Office.

One must understand the depth of murder to appreciate how the long delays in receiving any meaningful criminal restitution compromise the justice victims so richly deserve. A friend and fellow survivor, Carrie Freitag, in her book, “Aftermath,” eloquently describes homicide grief and with her permission, has let me expand on that description;

Homicide Grief

Homicide Grief is the yearning to say one last good-bye. Grief is clenching your teeth

until you have a headache that won't go away. Grief is a field of fog and distance where we wander lost and aimless. Grief is dreaming about our loved one and not being able to think of anything else. Grief is wondering why fate chose them and not me. Grief is the fear of living with the loss, and fear of losing more. Grief is the identity crisis that ensues when we lose those who help define who we are, how we live, and how we relate to one another. Grief is panning through memories over and over searching for jewels. It is looking at old family pictures and yearning for that day so long ago in the past.

Grief is wondering where your loved one really is, and if they can see you, hear you, or read your mind. Grief is waving or calling to them just in case. Grief is forging signs and symbols to replace the words you can no longer share. Grief is knowing the rainbow that shouldn't scientifically exist on a cloudy day is a message to you saying "I DO EXIST".

Grief is hearing that special song on the radio and knowing your loved one is with you. Grief is having to look into your nine-year old niece's eyes and try to explain why her daddy is never coming home. Grief is sitting in bed crying in the middle of the night saying "God I miss you." Grief is discovering pieces of what was lost, in places you don't expect. Grief is grasping opportunities to connect, to share, to care that you might have otherwise left for tomorrow, because you are ever mindful now that there may be no tomorrow. Grief is being able to better distinguish what is really important and meaningful after all is said and done, and choosing to do more of it. Grief is the yearning, the reaching, the unrequited love that hides behind our losses. Grief truly is a tribute to the depth of your love.

Restitution is important to ensuring the perpetrator is held accountable and crime victims

are financially compensated for their loss. We must and can do a better job of collecting and enforcing restitution. In the words of the great Nobel Prize winning author and holocaust survivor, Ellie Weissel, ***“We must take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.”***

It is time that we are no longer silent when it comes to collection and enforcement of restitution.